

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA,	)	
	)	DOCKET NO.: PT-1997-20
Appellant,	)	
	)	
-vs-	)	
	)	
BARBARA BYRD,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	ORDER and OPPORTUNITY
	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on the 15th day of April, 1998, in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The Department of Revenue (DOR), represented by attorney Lawrence Allen and appraiser Terry Swope, presented testimony in support of the appeal. The taxpayer, Barbara Byrd, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, a period of time established for the receipt of post hearing documents, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes

as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only, a no title cabin located on national forest land, Lewis & Clark County, MT. Assessor number 1997-33-1-01-01-0002.

3. The taxpayer filed an AB-26 Property Adjustment form on 7/9/97. After review, the DOR adjusted the 1997 market value from \$47,100 to \$12,340. (ex. #1, pg. 2)

4. The "phase-in" value for 1997 was calculated at \$22,345 subsequent to the AB-26 review.

5. The taxpayer appealed to the Lewis & Clark County Tax Appeal Board requesting a value of "salvage value only. Maybe \$1,500 not over \$5,000."

6. The County Board granted a reduction:

"Board approved the appeal setting the value at \$12,340."

7. The DOR appealed that decision to this Board based on the belief that the local board meant that the

taxpayer should pay taxes based on \$12,340, rather than the "phased-in" value of \$22,345 in accordance with Montana law.

8. The subject property is located on National Forest land managed by the United States Forest Service and is subject to the terms of a Special Use Permit.

9. The subject property will be allowed to remain on the location only as long as Mrs. Byrd chooses to exercise the privileges of the permit. If she chooses not to live in the cabin, the permit will be canceled. The permit is only valid for her lifetime and will not be reissued. Her estate is held responsible to remove the buildings, equipment, and other belongings listed on the permit.

10. The value on the subject property for 1996 was \$22,550. This value represents the remaining value after the 1991 agreement between the parties to allow for a 5% depreciation per year. The agreement was made following an AB-26 Property Adjustment form filing by the taxpayer in June of 1991.

11. The 1997 value is broken down to \$11,590 for the dwelling, and \$750 for outbuildings. The market value for the subject property was determined by the cost approach method of appraisal. The DOR applied an economic condition factor (ECF)

of 111% in determining the market value.

#### DOR CONTENTIONS

The value of this cabin had been changing annually prior to the beginning of the current appraisal cycle. Because of the unique circumstances of the life estate provisions of the permit that allows it to exist on the National Forest, the cabin was depreciated by an additional 5% per year. Both parties were agreeable to that arrangement. The value on the property for 1996 was \$22,550, the result of that previous depreciation arrangement. The value determined for the 1997 appraisal cycle is based on a depreciation that recognizes the maximum depreciation, therefore leaving the improvements at salvage value. The DOR's 1997 appraisal discontinues the 5% annual depreciation.

It is the opinion of the DOR that the legislature intended for the phase-in of value to apply to properties that experienced a reduction in value between 1996 and 1997 as well as those properties that experienced an increase in value. The DOR brought this appeal from the local board decision to this Board because it contends that the local board intended in its decision that the phase-in value be eliminated.

The DOR argued the phase-in of 2% of the difference

between the 1996 value and the 1997 appraised value is supported in Montana Statute because 15-8-111, MCA, provides:

"All taxable property must be assessed at 100% of its market value except as otherwise provided."

The legislature has provided that exception in 15-7-111,(1),

MCA:

The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten.

All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 2% of the total change in valuation. (emphasis supplied)

#### TAXPAYER'S CONTENTIONS

The taxpayer stated she agrees with the appraised value of \$12,340, and it is upon that value she wants the property taxes calculated. She states in her exhibit #1:

I am asking the panel to over-ride Senate Bill 195 and utilize the adjusted 1997 appraised figure of \$12,340 to base 1997 taxes on. Furthermore I (sic) the promised 5% per year reduction of that \$12,340 value starting in 1998 tax year.

Mrs. Byrd presented documentation that the subject improvements must be removed from National Forest land when she is no longer the person exercising the privileges spelled out in the permit that allows her to live in and use these

improvements.

Mrs. Byrd stated that she believed the decision of the local board meant that she would be paying property taxes based on the \$12,340.

#### DISCUSSION

The facts in this case show that the property has been declining in value since at least 1991. The DOR recognized that steady decline by actually applying 5% additional depreciation per year during the previous appraisal cycle. The DOR again recognized a dramatic decline in value when, in 1997, the beginning of a new appraisal cycle, the value was lowered to \$12,340. The taxpayer merely asks that the appraised value be recognized for assessment purposes. Mrs. Byrd also asked that the 5% per year depreciation schedule be continued beginning in 1998.

The application of a yearly depreciation on real property is unique as described by Mr. Swope for the DOR. He said that in this case the appraisers believed that the arrangement made sense because the taxpayer essentially has a life estate in the property. Since the property must be destroyed or removed when no longer occupied, it will essentially have only salvage value at the end of the taxpayer's occupation of the dwelling.

The appeal of the DOR in this case was brought forward on their opinion that the local board decision was meant to ignore the provisions of the 2% phase-in of value, not on a question of value.

There is, however, a question of value in the application of an Economic Condition Factor of 111% on a property that is declining in value, and by all testimony will never be marketable. There is no indication from the materials upon which the DOR based its valuation nor from the evidence in the record that this ECF is justified.

The taxpayer asked this Board to "over-ride Senate Bill 195" which is not within this Board's jurisdiction. The taxpayer also asked that the annual depreciation allowed in the prior cycle be reinstituted in 1998. It is the opinion of this Board that the DOR has adequately recognized the amount of depreciation to be applied to this property.

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Reappraised Value	\$12,340
Value Before Reappraisal (VBR)	\$22,550
Change in Value	(\$10,210)

Value Phase-in Calculation	
Change in Value	(\$10,210)
Phase-in Percentage	2%
Amount Phased-in	(\$204)

Value Before Reappraisal (VBR)	\$22,550
Amount Phased-in	(\$204)
	8

Phase-in Market Value	\$22,346			
Estimated Taxes with Phase-In Provisions		Taxes without Phase-In Provisions		\$ Amount Differences
Phase-in Market Value	\$22,346	Market Value	\$12,340	\$10,006
Taxable Percentage	3.838%	Taxable Percentage - *	3.86%	
Taxable Value	\$858	Taxable Value	\$476	\$381
Estimated Mill levy - **	0.41274	Estimated Mill levy - **	0.41274	
<b>Estimated General Taxes</b>	<b>\$354.02</b>	<b>Estimated General Taxes</b>	<b>\$196.60</b>	<b>\$157.42</b>
Impact on State Mills with Phase-In		Impact on State Mills without Phase-In		
Phase-in Market Value	\$22,346	Market Value	\$12,340	\$10,006
Taxable Percentage	3.838%	Taxable Percentage - *	3.86%	
Taxable Value	\$858	Taxable Value	\$476	\$381
State Mills	101	State Mills	101	

States Portion of the Taxes	\$86.63	States Portion of the Taxes	\$48.11	\$38.52
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Assumptions: \* Taxable percentage remains unchanged at the 1996 rate of 3.86%.  
 \*\* Estimated mill levy remains unchanged.

The situation created here is one that indicates an attempt at equity by the stated position that the phase-in of a percentage of value, whether up or down, has to be the same for each taxpayer. It is a situation that, while equitable in application of a method, disregards equalization of value for taxation purposes. This State does not have a constitutional or legislative history of asking its taxpayers to pay taxes on values that are not present. It has, in fact, adopted the premise that taxpayers are to pay property taxes on 100% of market value. One of the primary functions of the appeal system is to make decisions on valuation questions relating to assessment, and the guiding principles have always centered on achieving 100% of market value. For 1997 and 49 more years (based on 2% change/year to achieve 100% of market value), the phase-in system of assessment creates winners: those who will pay on a controlled indication of value that is significantly less than 100% of value; and losers: those who will now pay on something over 100% of value. Higher value properties in 1997, or those of increasing value, are being under-assessed even though they may be appraised correctly. Conversely, lower value properties in 1997, or those of decreasing value, are being over-assessed even though they may be appraised

correctly. Property with increasing value has essentially been granted partial tax exemption at the expense of property with decreasing value.

The amount of assessment that is being made over and above the true value of the property is effectively no longer a tax since the property tax is "ad valorem". The DOR appraisal indicates the value is not there, and through the assessment the resultant collection of money becomes something other than a tax on value and is, in effect, a confiscation.

The DOR is charged with equalization of values by Montana statute, 15-9-101, MCA. There is nothing in the record to indicate that the DOR has not done so. The values may very well be equalized, but the market values as determined are not being utilized for assessment purposes. The market values merely are used to determine a basis for a "phase-in" that results in the tax burden being shared in an unequal fashion.

The DOR cannot be faulted for following a procedure determined for it by the Montana legislature. As an executive branch agency it has a duty to faithfully execute the law as established by the legislature. "It is also a rule of statutory construction that the legislature acted with full

knowledge and information as to the subject matter and existing conditions including the construction placed on previous law by executive officers acting under it." Helena Valley Irrigation Dist v.St. Hwy. Comm'n, 150 Mont. 192, 433 P 2d 791. The DOR is not at liberty to add something they might believe was omitted by the legislature, nor omit something that is written in the statute. A letter written by the DOR Director (Ex B in PT-97-62, Potter v. DOR) is an explanation to a legislator of how the DOR is administering a law that became effective over ten months before the letter was dated. That exhibit is not in itself indicative of legislative intent. We agree that the legislature intended the method of phase-in of value to be applied to properties of decreasing value as well as to properties experiencing an increase in value.

1-2-102, MCA, instructs: In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

15-1-101(1)(b), MCA defines assessed value as "the property value as defined in 15-8-111." 15-8-111(4), MCA, states, "For purposes of taxation, assessed value is the same as appraised value." (emphasis supplied) It is clear in this

case that the appraised value for 1997 and the value upon which the taxes are being assessed are two different figures. We are forced to stray from the equation of appraised value and assessed value being the same. This creates an inconsistency between 15-8-111(4), MCA, and 15-7-111(1), MCA, that must be controlled by the particular provision of 15-8-111(4), MCA, for purposes of taxation, assessed value is the same as appraised value.

The fact that the DOR brought this appeal from a local board decision that they believed was not recognizing the provisions of 15-7-111, MCA, surfaces another issue in the application of the "phase-in" of values. The decisions of the local tax appeal boards, this Board, and the Courts on judicial review, have heretofore been determinative of value as they relate to taxation. The provisions of a "phase-in" as demonstrated here negate even the application of a reduction in value if found by any reviewing authority because, under those provisions, the change would be "phased-in" from the value before reappraisal. For the appellant who questions the market value of his property under 15-7-102, MCA, 15-15-102, MCA, 15-2-301, MCA, or 15-2-303, MCA, even if a significant reduction in value was granted, there would be only the benefit of 2% of

the difference between the reviewing authority decision and the value before reappraisal. Not only has the equalization of assessment been disturbed but so has the impact of review that is contemplated by the Montana Constitution and the Montana Code Annotated. The right of review remains, but the result is minimal if, in fact, valuation changes are found necessary.

"It is STAB's duty to determine the individual effect of the discriminatory method of appraisal before STAB can affirm, modify, or reverse the County Tax Appeal Board." Dept. of Revenue v. Countryside Village, 205 Mont. 51 (1983). The right of review remains, but the taxpayer also has a right to the remedy, and that right is lost by the action of 15-7-111(1),MCA.

The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931), that; It is required that there shall not be any unfair discrimination among the several counties, or between the different classes of taxable property in any county, or between individuals.(emphasis supplied)

The Montana legislature has supported the premise that is contemplated by the Montana State Constitution and the decisions of the Montana Courts by providing a policy in Title

15 of the Montana Code Annotated.

15-7-131. Policy. It is the policy of the state of Montana to provide equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers. (emphasis supplied)

The matter of equalization of values for assessment and compliance with the constitutional mandate to "Appraise, assess and equalize the valuation of all property which is to be taxed in the manner provided by law" is, of course, a duty of government itself.

It is the opinion of this Board that there are four areas where the phase-in provisions of 15-7-111, MCA, create conflict of statute, or create situations that are squarely at odds with statute and the Montana Constitution. These issues are: equalization of values for taxation purposes, the principles of statutory construction, the confiscation of property, and the right of remedy.

The Board cannot change the provisions of Senate Bill 195 as requested by the taxpayer in this case, and cannot formally rule with any jurisdiction on the constitutional issues raised by this appeal. The Montana Supreme Court, in Larson v. State and DOR, 166 Mont. 449 (1975), has retained that function for the courts.

This taxpayer has responded to the appeal filed by the DOR with this Board, appeared and presented testimony at hearing, and deserves a reasoned decision from this Board. We believe a court of competent jurisdiction may do what this Board cannot do and find the disparity in taxation created by the "phase-in" provisions of 15-7-111 unconstitutional.

It is the opinion of the Board that the application of the Economic Condition Factor which increases the costs utilized to appraise the subject property is not supported by the record and should be removed.

#### CONCLUSIONS OF LAW

1. Article VIII, Section 3, Constitution of the State of Montana. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

2. 15-7-131, MCA, Policy. It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

3. 15-7-111, MCA. Periodic revaluation of certain taxable property. (1) The department of revenue shall administer and supervise a program for the revaluation of all

taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 2% of the total change in valuation.

4. 15-7-112, MCA. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

5. 15-8-111(4), MCA. For purposes of taxation, assessed value is the same as appraised value.

6. 1-2-102, MCA. In the construction of a statute, the intention of the legislature is to be pursued if possible.

When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

7. 42.20.501-503 Administrative Rules of Montana

8. *State ex rel. Schoonover v. Stewart*, 89 Mont. 257

(1931)

9. *Larson v. State and DOR*, 166 Mont. 449 (1975)

10. *Potter v. DOR*, PT-1997-62, STAB, (1998)

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that this appeal be granted in part and denied in part. The subject property shall be entered on the tax rolls of Lewis & Clark County by the assessor of that county at the value indication after the removal of the 111% Economic Condition Factor. The phase-in provisions provided for in 15-7-111 MCA, shall be applied to that value indication.

Dated this 18th of May, 1998.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. McKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

